

1 Jeffrey L. Kessler (*pro hac vice*)
JKessler@winston.com
2 Sofia Arguello (*pro hac vice*)
SArguello@winston.com
3 WINSTON & STRAWN LLP
200 Park Avenue
4 New York, NY 10166-4193
Telephone: (212) 294-6700
5 Facsimile: (212) 294-4700

6 Jeanifer E. Parsigian (SBN: 289001)
JParsigian@winston.com
7 WINSTON & STRAWN LLP
101 California Street, 34th Floor
8 San Francisco, CA 94111
Telephone: (415) 591-1000
9 Facsimile: (415) 591-1400

10 *Attorneys for Non-Party*
ACTIVISION BLIZZARD, INC.

11
12
13 **UNITED STATES DISTRICT COURT**
14 **NORTHERN DISTRICT OF CALIFORNIA**
15 **SAN FRANCISCO DIVISION**

16
17 **IN RE GOOGLE PLAY STORE**
18 **ANTITRUST LITIGATION**

19 THIS DOCUMENT RELATES TO:

20 *Epic Games, Inc. v. Google LLC et al.*,
Case No. 3:20-cv-05671-JD

21 *Match Group, LLC et al. v. Google LLC et al.*,
Case No. 3:22-cv-02746-JD

22 Case No. 3:21-md-02981-JD

23
24
25
26
27
28 **DECLARATION OF OMER SALIK IN
SUPPORT OF EPIC'S AND MATCH'S
ADMINISTRATIVE MOTION TO
CONSIDER WHETHER ANOTHER
PARTY'S MATERIAL SHOULD BE
SEALED**

The Honorable James Donato

I, Omer Salik, declare as follows:

1. I am Vice President of Litigation and Intellectual Property for Activision Blizzard, Inc. (“Activision Blizzard”). I joined Activision Blizzard in 2011. I make this Declaration on my own personal knowledge and, if called as a witness, I could and would testify competently to the matters

1 set forth herein.

2 2. In my current role at Activision Blizzard, I am responsible for, in part, Activision
 3 Blizzard's litigation and intellectual property matters, including matters regarding document
 4 collection, IP licensing and strategic decisions related thereto. Activision Blizzard keeps such
 5 information confidential to protect itself and its partners from potential harm.

6 3. I understand that, in the above-captioned actions, Plaintiff Epic Games, Inc. ("Epic")
 7 and Plaintiffs Match Group, LLC, Humor Rainbow, Inc., Plenty of Fish Media ULC, and People
 8 Media, Inc. (collectively, "Match," and together with Epic, "Plaintiffs") filed a Notice of Motion and
 9 Motion to Amend Complaints ("Motion to Amend"). ECF No. 343.¹ In the Motion to Amend,
 10 Plaintiffs misrepresent the deposition testimony of an Activision Blizzard executive provided in the
 11 above-captioned action. I briefly addressed this point in my previously-filed Declaration in Support
 12 of Epic's and Match's Administrative Motion to Consider Whether Another Party's Material Should
 13 Be Sealed ("Plaintiffs' Sealing Declaration") (ECF No. 350) and in my Declaration in Support of
 14 Google's Administrative Motion to Consider Whether Another Party's Material Should Be Sealed
 15 ("Google's Sealing Declaration," together with Plaintiffs' Sealing Declaration, "Sealing
 16 Declarations") (ECF No. 361).

17 4. I understand that after the filing of the Sealing Declarations, Plaintiffs filed a Reply in
 18 Support of Motion to Amend Complaints ("Reply"), the Declaration of Tate Harshbarger, the
 19 Declaration of Michael J. Zaken ("Zaken Declaration"), and accompanying exhibits (collectively,
 20 "Reply Briefing"). *See* ECF Nos. 362–64. I further understand from Epic counsel that the Reply
 21 Briefing includes Activision Blizzard information that is designated "NON-PARTY HIGHLY
 22 CONFIDENTIAL – OUTSIDE COUNSEL EYES ONLY" in accordance with the Protective Orders
 23 in this case. *See* ECF Nos. 117, 124, 154, 170, 237, 248. Epic counsel specifically indicated that
 24 Activision Blizzard's "NON-PARTY HIGHLY CONFIDENTIAL – OUTSIDE COUNSEL EYES
 25 ONLY" information appears in the Reply, the Zaken Declaration, and an exhibit to the Zaken
 26
 27

28 ¹ The referenced ECF numbers correspond to Case No. 3:21-md-02981-JD.

1 Declaration (“Exhibit”).²

2 5. Accordingly, I am aware that Plaintiffs have filed an Administrative Motion to
 3 Consider Whether Another Party’s Material Should Be Sealed (“Sealing Motion”). ECF No. 365. I
 4 write this Declaration in support of the Sealing Motion insofar as it relates to the Activision Blizzard
 5 information incorporated into the Reply Briefing and described in greater detail below.

6 6. I understand that, where documents are “more than tangentially related to the merits of
 7 a case,” this Court requires a party to establish “compelling reasons” for sealing. *See Connor v. Quora,*
 8 *Inc.*, No. 18-cv-07597, 2020 WL 7408233, at *1 (N.D. Cal. Oct. 15, 2020) (citations and internal
 9 quotation marks omitted). By contrast, this Court requires a “lesser showing of ‘good cause’” for
 10 “[f]ilings that are only tangentially related to the merits.” *See id.* (citation omitted). I also understand
 11 that these standards apply where a non-party seeks to preserve the confidentiality of its information
 12 by filing a declaration in support of a party’s sealing motion. *See Civil L.R. 79-5(f)(3)* (incorporating
 13 requirements of 79-5(c)(1)).

14 7. I understand that this Court has held that the “compelling reasons” standard applies to
 15 motions to amend complaints. *See Reyna v. Arris Int’l PLC*, No. 17-CV-01834-LHK, 2018 WL
 16 1400513, at *2 (N.D. Cal. Mar. 20, 2018) (applying “compelling reasons” standard to amended
 17 complaint and motion for leave to file an amended complaint). The “compelling reasons” standard is
 18 met where the subject of the sealing request is a “source[] of business information” the disclosure of
 19 which “might harm a [non-party’s] competitive standing.” *See Ctr. for Auto Safety v. Chrysler Grp.,*
 20 *LLC*, 809 F.3d 1092, 1097 (9th Cir. 2016) (internal quotation marks omitted) (quoting *Nixon v. Warner*
 21 *Comm’ns, Inc.*, 435 U.S. 589, 598 (1978)). The “compelling reasons” standard is also met where
 22 disclosure “could result in improper use of the material for scandalous or libelous purposes.” *See*

23 2 In submitting this Declaration, Activision Blizzard—a non-party to this case and which therefore is
 24 not privy to discovery in the matter—is reliant on Epic and Match counsel to identify references to
 25 Activision Blizzard “NON-PARTY HIGHLY CONFIDENTIAL – OUTSIDE COUNSEL EYES
 26 ONLY” information in the Reply Briefing that warrants sealing. In submitting this Declaration,
 27 Activision Blizzard relied on correspondence from Epic counsel. Activision Blizzard reserves the
 28 right to supplement this Declaration or submit a new declaration if it learns that other Activision
 Blizzard “NON-PARTY HIGHLY CONFIDENTIAL – OUTSIDE COUNSEL EYES ONLY”
 information was included in the Reply Briefing but omitted from Epic counsel’s correspondence.

1 *Pintos v. Pac. Creditors Ass'n*, 605 F.3d 665, 679, 679 n.6 (9th Cir. 2010) (citation and internal
 2 quotation marks omitted). And, in assessing “compelling reasons,” the Court “balance[s] [] the
 3 public’s right to access” with a “non-party’s privacy interests.” *See O’Connor v. Uber Techs., Inc.*,
 4 No. C-13-3826-EMC, 2015 WL 355496, at *2 (N.D. Cal. Jan. 27, 2015).

5 8. Activision Blizzard is a leading global developer and publisher, whose objective is to
 6 develop, publish, and distribute high-quality interactive entertainment content and services and deliver
 7 engaging entertainment experiences to users worldwide. Maintaining the confidentiality of its
 8 business plans, strategies, and decision-making was, and continues to be, integral to Activision
 9 Blizzard achieving its status as a leader in the entertainment industry. Thus, Activision Blizzard has
 10 a legitimate interest in preserving the confidentiality of its information.

11 9. The redactions in the Reply Briefing, in effect, protect highly confidential, internal
 12 business information of Activision Blizzard relating to business strategy, which would result in serious
 13 competitive harm if disclosed. *See Epic Games, Inc. v. Apple Inc.*, No. 4:20-cv-05640, 2021 WL
 14 1925460, at *1 (N.D. Cal. Apr. 30, 2021) (finding “compelling reasons” for sealing “highly
 15 confidential information, including . . . business decision-making . . . belonging to [] a third-party non-
 16 party to th[e] action”). Indeed, disclosure of this information would give Activision Blizzard
 17 competitors access into Activision Blizzard’s internal business decision-making processes, which the
 18 competitors could then use to inform their own business strategies. *See Lathrop v. Uber Techs., Inc.*,
 19 No. 14-cv-05678, 2016 WL 9185002, at *2 (N.D. Cal. June 17, 2016) (“[U]nder Ninth Circuit law, . .
 20 . [] reports are appropriately sealable under the ‘compelling reasons’ standard where that information
 21 could be used to the company’s competitive disadvantage.”).

22 10. In addition, the redactions in the Reply Briefing serve to protect Activision Blizzard
 23 employees from injury to their reputation and undue harassment. *See, e.g., Sentyln Therapeutics, Inc.*
 24 v. U.S. Specialty Ins. Co., No. 19-cv-1667-LAB-AHG, 2021 WL 794271, at *3 (S.D. Cal. Mar. 1,
 25 2021) (noting that “redaction of non-party personal identifiers [including names] is warranted” under
 26 the “compelling reasons” standard where it “runs a substantial risk of exposing [] individuals to
 27 harassment”). Plaintiffs’ Motion to Amend makes false claims regarding activities in Activision
 28 Blizzard’s negotiations with Google. A fundamental premise of the Reply Briefing is reaffirming the

1 false claims in the Motion to Amend.

2 11. Simply put, the interests of Activision Blizzard and the Activision Blizzard employees
 3 in keeping Plaintiffs' demonstrably false allegations sealed strongly outweigh the public's right to
 4 access additional information about Plaintiffs' false claims. *See G&C Auto Body Inc. v. Geico Gen.*
 5 *Ins. Co.*, No. C06-04898-MJJ, 2008 WL 687372, at *2 (N.D. Cal. Mar. 11, 2008) (redacting non-party
 6 identifying information (including name) where it was of "little or no relevance to the [underlying
 7 filing]"); *Selling Source, LLC v. Red River Ventures, LLC*, No. 2:09-cv-01491-JCM-GWF, 2011 WL
 8 1630338, at *7 (D. Nev. Apr. 29, 2011) (finding "compelling reasons" for sealing where the material
 9 "contain[ed] false allegations that might improperly be used for libelous purposes").

10 12. Preventing these competitive harms requires sealing of the redacted information in the
 11 Reply Briefing. There is no less restrictive alternative. Sealing is the only means of (i) preserving the
 12 sanctity of Activision Blizzard's highly confidential, non-public, and competitively sensitive
 13 information, and (ii) cabining and condemning Plaintiffs' misuse and mischaracterization of
 14 Activision Blizzard's information. Absent sealing, Activision Blizzard competitors and other third
 15 parties will undeservingly have access to this information, and could exploit it for other improper
 16 purposes. And absent sealing, Plaintiffs will feel emboldened to falsely misrepresent evidence before
 17 this Court, as they have in their Motion to Amend.

18 13. The excerpts from the Reply Briefing that Activision Blizzard hereby seeks to seal,
 19 with the reasons for each request, are set forth below:

Document	Portion Containing Designated Information	Reason for Sealing
Reply. ECF No. 362.	Page 4, line 21 to page 5, line 2 (between "Ex. D," and "see also")	Disclosure of this information would result in the disclosure of Activision Blizzard's highly confidential, non-public, and competitively sensitive strategic business information and decision-making. In addition, the disclosure of this information would irreversibly connect an Activision Blizzard executive to Plaintiffs' demonstrably false and libelous misrepresentations in the Motion to Amend, which are reaffirmed in the Reply, thus subjecting the executive to injury to his reputation and

		undue harassment.
Reply. ECF No. 362.	Page 5, lines 3–4 (between “that” and “and”)	Disclosure of this information would result in the disclosure of Activision Blizzard’s highly confidential, non-public, and competitively sensitive strategic business information and decision-making. In addition, the disclosure of this information—when combined with the representations in Plaintiffs’ Motion to Amend and Reply—would irreversibly connect an Activision Blizzard executive to Plaintiffs’ demonstrably false and libelous misrepresentations in the Motion to Amend, which are reaffirmed in the Reply, thus subjecting the executive to injury to his reputation and undue harassment.
Reply. ECF No. 362.	Page 5, lines 4–5 (between “and” and end of sentence)	Disclosure of this information would result in the disclosure of Activision Blizzard’s highly confidential, non-public, and competitively sensitive strategic business information and decision-making. In addition, the disclosure of this information—when combined with the representations in Plaintiffs’ Motion to Amend and Reply—would irreversibly connect an Activision Blizzard executive to Plaintiffs’ demonstrably false and libelous misrepresentations in the Motion to Amend, which are reaffirmed in the Reply, thus subjecting the executive to injury to his reputation and undue harassment.
Zaken Declaration. ECF No. 363.	¶ 6	The disclosure of this information would irreversibly connect an Activision Blizzard executive to Plaintiffs’ demonstrably false and libelous misrepresentations in the Motion to Amend, which are reaffirmed in the Reply, thus subjecting the executive to injury to his reputation and undue harassment.
Exhibit D to the Zaken Declaration. ECF No. 363-4.	Document in its entirety	Disclosure of this information would result in the disclosure of Activision Blizzard’s highly confidential, non-public, and competitively sensitive strategic business information and decision-making. In addition, the disclosure of this information would irreversibly connect an Activision Blizzard executive to Plaintiffs’ demonstrably false and libelous misrepresentations in the Motion to Amend, which are reaffirmed in the Reply, thus subjecting the executive to injury to his reputation and undue harassment.

1 Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and
2 correct and that I executed this declaration on November 4, 2022 in _____.

3 By: Omer Salik
4 Omer Salik
5 Activision Blizzard, Inc.
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28